

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
(EASTERN DIVISION)**

IN RE:	/	Case No. 02-B02474
	/	Chapter 11
KMART CORPORATION, et al.	/	(Jointly Administered)
	/	Hon. Judge Susan Pierson Sonderby
DEBTORS	/	
	/	Hearing Date: June 8th, 2004

**MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 3008 TO RECONSIDER ORDER RECLASSIFYING CLAIM**

Comes now, José M. Lorié, creditor *pro se*, and most respectfully moves this Honorable Court for the entry of an Order on reconsideration pursuant to Fed. R. Bankruptcy P. 3008, setting aside, as it respects the appearing creditors, certain “Order Disallowing and Expunging or Otherwise Reducing or Reclassifying Certain Claims Set Forth in the Twenty-first Omnibus Objection (Certain Personal Injury and other Claims)”, entered on April 2, 2004. Notice of said Order was improper under the specific circumstances of this case, the reclassification is devoid of legal basis, and such arbitrary and legally unjustified reclassification is in violation of the Due Process Clause and the Seventh Amendment of the Constitution of the United States. In support of his application, the appearing creditors states and prays as follows:

On February 2, 2004, K-Mart filed an Omnibus Objection, seeking the entry of an Order reclassifying the undersigned creditor’s personal injury claim, in civil case 98-1867(PG), pending in the United States District Court for the District of Puerto Rico, from \$12,000,000 to \$40,000. According to Defendant, copy of the 21st Omnibus Objection and a Notice of Hearing set for March 15, 2004, were served by regular mail upon Plaintiff *José M. Lorié Velasco*, at the following address: *P.O. Box 16606, San Juan, P.R., 00908*.

Creditor Lorié Velasco never received notice of K-mart's 21st Omnibus Objection and the Notice of Hearing, because K-Mart failed to adequately serve these documents. As K-mart very well knows, P.O. Box 16606, San Juan, P.R., 00908, *is not* Lorié Velasco's address of record in this Bankruptcy Court.

At all times, creditor Lorié Velasco has always appeared *pro-se*, requesting leave by this Honorable Court to lift the automatic stay and plan injunction of the undersigned pending claim in Federal Court in Puerto Rico. In the proceedings at this Honorable Court the undersigned creditor had set forth the following address of record, for purposes of all notifications:

329-B Clemson
University Gardens
San Juan, Puerto Rico, 00927

Unbeknown to creditor Lorié Velasco, on April 2, 2004, the Bankruptcy Court entered an Order granting K-mart's 21st Omnibus Objection, thereby reclassifying creditor's claim, identified as claim #30690, from \$12,000,000 to \$40,000. Again, this Order was also erroneously sent to ***P.O. Box 16606, San Juan, P.R., 00908, and not to the creditor's address of record .1***

In view of the foregoing, it is clear that the April 2, 2004 Bankruptcy Court Order against creditor Lorié Velasco is null and void, for lack of adequate notice, in violation of the Due Process clause and the Seventh Amendment of the United States Constitution.

Furthermore, additional grounds of great weight militate towards granting this motion for reconsideration and setting aside the Order in question.

1 Creditor Lorié Velasco learned of all this upon K-mart's filing of "Defendant's Motion to Dismiss with Prejudice Due to Bankruptcy Court's Final Order on the Claim," filed in the undersigned's pending litigation in Federal court in Puerto Rico.

On December 30, 2003, on recognition by K-mart that the undersigned had exhausted certain personal injury settlement procedures approved by this Court, K-mart proposed to the appearing creditor to enter into an Agreed Order to be submitted to this Bankruptcy Court in order to lift the automatic stay and the plan injunction in the case of *Jose Lorie Velasco, et al v. K-mart, et al*, civil # 98-1867(PG) (D.P.R.). See, **Exhibit 1(a)**. This proposal was forwarded by K-mart to the creditor's address of record: 329-B Clemson, University Gardens, San Juan, Puerto Rico, 00927. See, **Exhibits 1(a) and 1(b)**.

On January 7, 2004, *as per K-mart's proposal*, the parties herein duly executed a legal and binding agreement entitled, "AGREED ORDER BETWEEN KMART AND JOSE M. LORIE VELASCO TO MODIFY AUTOMATIC STAY AND PLAN INJUNCTION." The parties agreed therein to partially lift the automatic stay and the plan injunction to permit the litigation in case # 98-1867(PG) pending in Federal Court in Puerto Rico "*to proceed and continue to a final judgment or settlement*" (emphasis supplied). See, **Exhibit 2**. This agreement was approved and entered into by this Bankruptcy Court, on January 14, 2004. **Id.**

On February 4, 2004, K-mart notified the creditor herein copy of the approval by this Bankruptcy Court of the "AGREED ORDER BETWEEN KMART AND JOSE M. LORIE VELASCO TO MODIFY AUTOMATIC STAY AND PLAN INJUNCTION." See, **Exhibit 3(a)**. Again, this notification was forwarded to the creditor's address of record: 329-B Clemson, University Gardens, San Juan, Puerto Rico, 00927. See, **Exhibits 3(a) and 3(b)**.

In view of the aforementioned stipulation entered into by the parties and approved by this Honorable Court on January 14, 2004, K-mart is undoubtedly bound by the Agreed Order to proceed and continue the litigation in case # 98-1867(PG), pending in the United States District

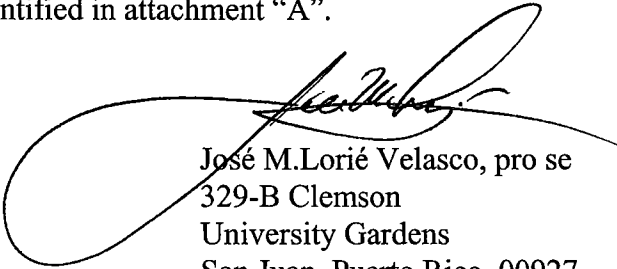
Court for the District of Puerto Rico, until final judgment or settlement.

Reconsideration of the April 2, 2004 Order, as it relates to the appearing creditors (Claim #30690) is allowed and justified under the provisions of Fed. R. Bankruptcy P. 3008.

Wherefore, the appearing party prays that the Order, dated April 2, 2004, be vacated and set aside as it regards to the reclassification of the pending claim of the appearing creditor (claim # 30690).

Respectfully submitted. In San Juan, Puerto Rico, on May 14, 2002.

I HEREBY CERTIFY, that a true and exact copy of this document has been sent by regular mail to the parties identified in attachment "A".



José M. Lorie Velasco, pro se
329-B Clemson
University Gardens
San Juan, Puerto Rico, 00927

Attachment "A"

Kmart Corporation
Attn. Eric S. Meier, Alan Gocha
3100 West Big Beaver Road
Troy, MI 48084
Facsimile No. 248-637-4857
Email Emeier@kmart.com
Email Agocha@kmart.com

Wilmer Cutler & Pickering
Attn. Andrew Goldman, Jorian Rose,
Jeffrey Gleit
399 Park Ave.
New York, NY 10022
Facsimile No. 212-230-8888
Email: andrew.goldman@wilmer.com
Email: jorian.rose@wilmer.com
Email: jeffrey.gleit@wilmer.com

Barack Ferrazzano Kirschbaum Perlman &
Nagelberg LLC
Attn. William Barrett, Gillian Munitz
333 West Wacker Dr., Suite 2700
Chicago, IL 60606
Facsimile No. 312-984-3150
Email: William.barrett@bfkpn.com
Email: Gillian.munitz@bfkpn.com

Office of the United States Trustee
Attn. Kathryn Gleason
227 West Monroe, Suite 3350
Chicago, IL 60606
Facsimile No. 312-8886-5794
Email Kathryn.M.Gleason@usdoj.gov

Landmark Document Services
308 West Randolph
Suite 500
Chicago, IL 60606
Facsimile No. 312-726-9027



December 30, 2003

Kmart Corporation
Resource Center
3100 West Big Beaver Road
Troy MI 48084-3163

Jose M. Lorie Velasco, Pro Se
329-B Clemson
University Gardens
San Juan, PR 00927

Dear Mr. Velasco:

This is in recognition of your motion in the Kmart Chapter 11 cases for relief from the plan injunction or Automatic Stay on behalf of yourself (Docket No. 19493). Since you have exhausted the personal injury settlement procedures approved by the United States Bankruptcy Court, Northern District of Illinois, Eastern Division, on July 17, 2002 (Docket No. 4944), as modified on August 29, 2002 (Docket No. 6190), Kmart agrees to a modification of the automatic stay and the plan injunction. As such, we propose to enter into the attached Agreed Order that will be submitted to the Court on Tuesday, January 13, 2004.

Please sign the Agreed Order at the place designated on the last page. After signing, please send by expedited mail the original signed copy of the Order to:

Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLC
Attn: William Barrett
333 West Wacker Drive, Suite 2700
Chicago, Illinois 60606

FAX: (312) 984-3156

****The original signed Agreed Order must be received at the above address on or before the morning of Friday, January 9, 2004.****

In addition, you must fax a copy of the signed Agreed Order to the following parties by Monday, January 12:

Kmart Corporation
ATTN: Mark Kreindler
Fax: 248.463.5595
Phone: 248.463.7309

Wilmer, Cutler & Pickering
ATTN: Michael D. Snyder
Fax: 202.663.6363
Phone: 202.663.6717

If you have any questions or concerns, please contact me at 248.463.7309.

Sincerely,


Mark Kreindler
Litigation Manager, Risk Management

Exhibit 1(a)

Kmart Corporation
3100 West Big Beaver Road
Troy MI 48084-3163



PRESORTED
FIRST CLASS

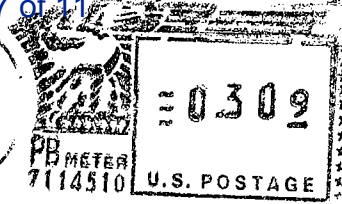
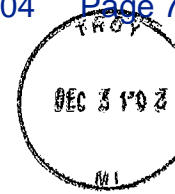
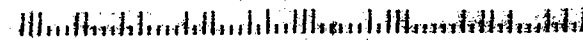


Exhibit 1(b)

Jose M. Lorie Velasco
329-B Clemson
University Gardens
San Juan, PR 00927

LXDFAMM

00927



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Case No. 02-B02474
)	
KMART CORPORATION, et al.,)	(Jointly Administered)
)	Chapter 11
)	
Debtors.)	Hon. Susan Picrson Sonderby

**AGREED ORDER BETWEEN KMART AND
JOSE M. LORIE VELASCO TO MODIFY
AUTOMATIC STAY AND PLAN INJUNCTION**

This Agreed Order is entered into and submitted to the Court in accordance with the agreement of Kmart Corporation and certain of its subsidiaries, former debtors and debtors-in-possession in the above-captioned cases (collectively, "Kmart") and Jose M. Lorie Velasco ("Velasco"), in resolution of Velasco's Motion for Relief from the Automatic Stay and for Relief from Article 12.11 of the Kmart's First Amended Joint Plan of Reorganization (Docket No. 19493) (the "Motion"), to a modification of the automatic stay and the plan injunction which became effective as of May 6, 2003, the effective date of the Kmart's First Amended Joint Plan of Reorganization, pursuant to Article 12.11 thereof and 11 U.S.C. §§ 524 and 1141 (the "Plan Injunction") as set forth herein; it appearing to the Court that the relief should be granted,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Velasco has exhausted that certain personal injury settlement procedure approved by this Court on July 17, 2002 (Docket No. 4944), as modified on August 29, 2002 (Docket No. 6190).

2. The automatic stay provision of 11 U.S.C. § 362(a) (the "Automatic Stay") and the Plan Injunction, with respect to certain litigation styled: **Jose M. Lorie Velasco vs Kmart Corporation, Case No. 98-1867** pending in the **Federal Court in San Juan, Puerto Rico** (the "Litigation"), in which **Velasco** seeks to establish and liquidate a personal injury claim (the "Claim"), are hereby modified in accordance with the terms set forth in this Agreed Order.

3. The Automatic Stay and the Plan Injunction are partially lifted to permit the Litigation to proceed and continue to a final judgment or settlement.

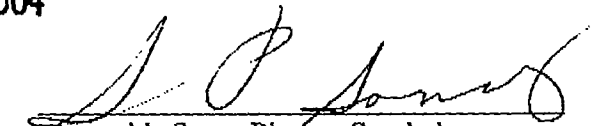
4. Notwithstanding anything in this Agreed Order to the contrary, the Automatic Stay and the Plan Injunction shall remain in effect with respect to any and all actions by **Velasco** to execute on any final judgment or settlement against **Kmart**, the **Kmart's** estates, the reorganized debtors, or any of their property.

5. Nothing in this Agreed Order shall be deemed an admission of fact on the part of **Kmart** with respect to the Claim or any facts alleged in the Motion or in the Litigation.

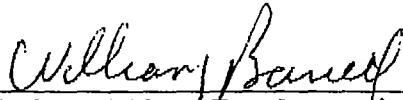
6. This Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Agreed Order.

ENTER this ____ day of _____, 2004.

JAN 14 2004


Honorable Susan Pierson Sonderby
United States Bankruptcy Judge

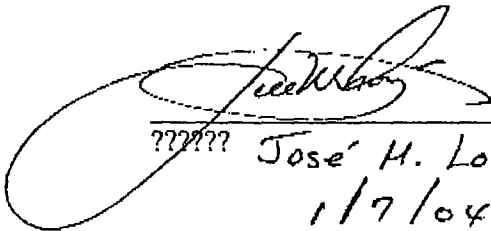
AGREED TO AND
APPROVED FOR ENTRY:



Andrew Goldman, Esq., by permission
Wilmer Cutler & Pickering
399 Park Avenue
New York, New York 10022
(212) 230-8836 (direct)
(212) 230-8888 (fax)

Attorney for Kmart Corporation

And

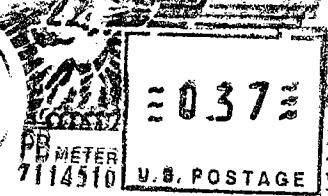
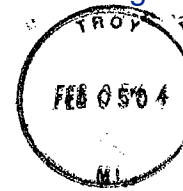


???? Jose' M. Lorie Velasco, Pro Se
1/7/04

Attorney for Jose Velasco

329-B CLEHSON
UNIVERSITY GARDENS
SAN JUAN, P.R. 00927

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3100 West Big Beaver Road
Troy MI 48084-3163



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00927+4020 23

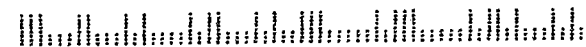


Exhibit 3(b)